

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3383 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GSRTC

Versus

MINOR JAYSHREEBEN NAVINCHANDRASHAH (THRO.GUARDIAN & FATHER)

Appearance:

MRS VASAVDATTA BHATT for Petitioner
MR MTM HAKIM for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.C.PATEL

Date of decision: 28/08/98

ORAL JUDGEMENT (Per J.M.Panchal,J.):

At the reuest of the learned Counsel appearing for the parties, the appeal is taken up for hearing today.

By means of filing this appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant has challenged judgment and award dated February 10, 1988 rendered by the Motor Accident Claims Tribunal (Aux.), Vadodara in Motor Accident Claim Petition No.1717 of 1993 by which the Tribunal has awarded a sum of Rs.1,97,210/- with interest at the rate of 12 per cent per annum thereon from the date of application till realisation as compensation to respondent No.1.

The accident in question took place on September 21, 1993. The respondent No.1, who is minor, was coming on bicycle on Vaghodia Road near Vrindavan Bus Stand. At that time, the respondent No.2 came there driving S.T. Bus in a rash and negligent manner and dashed with the respondent No.1. The respondent No.1 was thrown away on the road and sustained injuries, as left wheel of the bus ran over her. After the accident, the respondent No.1 was hospitalised for number of days. As the accident had occurred due to rash and negligent driving of the bus by respondent No.2, the respondent No.1 through her natural guardian and father, Navinchandra Jayantilal Shah, instituted M.A.C.P. No.1717 of 1993 before the Motor Accident Claims Tribunal (Aux.), Vadodara, and claimed compensation of Rs.3,00,000/-.

The claim petition was contested by the appellant as well as respondent No.2. In the reply, it was averred that respondent No.2 was not rash and negligent in driving S.T. bus and therefore the claim petition was liable to be dismissed.

After framing issues for determination and considering the evidence led by the parties, the Tribunal held that the respondent No.1 sustained injuries on account of negligence on the part of respondent No.2 in driving the vehicle, which was involved in the accident. The Tribunal considered the evidence led by the claimants regarding income and has awarded a sum of Rs.1,97,210/- with interest at the rate of 12 per cent per annum thereon from the date of application till realisation, by award dated February 10, 1998, giving rise to the present appeal.

Learned Counsel for the appellant submitted that having regard to the contents of first information report as well as panchnama of place of accident, the Tribunal ought to have held that negligence of respondent No.1 also contributed in the accident and compensation should not have been awarded on the footing that the respondent No.2 was solely responsible for the accident in question.

The counsel for respondent No.1 pleaded that the finding recorded by the Tribunal on the point of negligence is correct and the Court should not interfere with the same in the present appeal. In the alternative, it was submitted that in any view of the matter, negligence of respondent No.1, who was minor, cannot be held to be more than 10 to 15 per cent.

From the contents of first information report and panchnama, it is evident that respondent No.2 was coming from opposite direction by driving the S.T. Bus. The road is having width of 18 feet, whereas the bus was found standing, facing eastern side and front wheel of the bus was on the western side, about two feet away from the bicycle. From the documents produced on the record, it is very clear that the bus was going towards eastern side and its front wheel was 2 feet away from the bicycle on the western side. This would indicate that bicycle of the respondent No.1 had dashed with the middle of the S.T. Bus. In our view, the Tribunal was not justified in holding that the wheel was badly damaged which indicated that bus had dashed with the bicycle. On the totality of facts and circumstances of the case, we hold that respondent No.1's negligence had also contributed in the accident and we assess her negligence at 20 per cent.

So far as quantum is concerned, there is no substance in the challenge. On different heads, the Tribunal has awarded a sum of Rs.1,97,210/- as compensation to the respondent No.1. The computation of compensation is perfectly just and no case is made out to interfere with the same in the appeal. However, as we have come to the conclusion that respondent No.1 was negligent to the extent of 20 per cent, necessary deduction will have to be made from the amount of compensation payable to her. After deduction, respondent No.1 would be entitled to compensation of Rs.1,57,758/-, which is rounded up to the figure of Rs.1,60,000/-, having regard to the facts of the case.

For the foregoing reasons, the appeal partly succeeds. The award passed by the Tribunal stands accordingly modified. The appeal is partly allowed with no order as to costs. The appellant shall deposit the amount awarded, less the amount already deposited in the Tribunal, within eight weeks from today.
